

**NOTICE OF FINAL RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)**

**PREAMBLE**

**1. Sections Affected**

**Rulemaking Action**

R9-22-1001	Amend
R9-22-1002	Amend
R9-22-1003	Amend
R9-22-1004	Amend
R9-22-1007	Amend
R9-22-1008	Amend

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 36-2901, 36-2903(F), 36-2903.01 (K), and 36-2915.

Implementing statute: A.R.S. §§ 36-2901, 36-2903(F), 36-2903.01 (K), 36-2923, and 36-2915.

**3. The effective date of the rules:**

This rulemaking will be effective 60 days from the date of filing with the Secretary of State.

**4. A list of all previous notices appearing in the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: 14 A.A.R. 2244, June 6, 2008

Notice of Proposed Rulemaking: 14 A.A.R. 2310, June 13, 2008

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Mariaelena Ugarte  
Address: AHCCCS  
Office of Administrative Legal Services  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4693  
Fax: (602) 253-9115  
E-mail: AHCCCSRules@azahcccs.gov

**6. An explanation of the rule, including the agency's reasons for initiating the rule:**

The AHCCCS Administration proposes to amend the sections identified above as a result of a Five-Year Review Report approved by the Governor's Regulatory Review Council on May 6, 2008. The subjects requiring amendment are definitions, payor-of-last-resort requirements, cost-avoidance requirements and other technical changes.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

No study was reviewed during this rulemaking and the Agency does not anticipate reviewing any studies.

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business, and consumer impact:**

It is anticipated that the contractors, private sector, members, providers, small businesses, political subdivisions, the Department, and the Administration will be minimally impacted by the changes to the rule language. The areas requiring revision are for clarity as a result of a 5-Year-Rule-Review approved by the Governor's Regulatory Review Council. The Administration is proposing amendments to the rules to revise, reorganize, and clarify areas, such as, that county requirements are no longer used; reflecting changes as required by Deficit Reduction Act (DRA) and 42 CFR 433.139; describing when the Administration or a contractor may pay the difference between Third-Party Liability, Medicare, or a contracted rate and the Capped fee-for-service schedule; and clarifying when the Administration is not the payor of last resort.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

Proposed changes to R9-22-1005 have been removed as a result of public comments. R9-22-1003 was restructured to clarify the reimbursement responsibility of the Administration and a contractor when there is a third party liability that could be other insurance or Medicare. The Administration also made the rules more clear, concise, and understandable by making grammatical, verb tense, punctuation, and structural changes throughout the rules.

**11. A summary of the comments made regarding the rule and the agency response to them:**

**Commenter:**

A public comment was received by the close of record 5 p.m. on July 15, 2008 from:

Susan L. Watchman, Gammage and Burnham

**Rule:**

R9-22-1005

**Comment:**

The law firm, Gammage and Burnham, which represents hospital providers, commented that proposed R9-22-1005 appears to place an (exclusive) obligation on providers, rather than health plans, to bill third parties when third party liability is identified. The commenter also stated that the proposed rule fails to implement the DRA provisions specified in A.R.S. § 36-2923, does not address situations when adjustments occur outside of the 12

month statutory timeframe specified in A.R.S. § 36-2904, and appears to require providers to refund monies to the health plan regardless of the outcome of the third party action.

**Response:**

In response to the public comment, the Administration is striking any changes to this rule. A.R.S. § 36-2923 was added effective February 29, 2008 by Arizona Laws 2007, Chapter 263, Section 11. The proposed change was intended to bring the existing rule into conformance with certain aspects of that statutory change, but does not reflect all of the necessary changes. The agency has not resolved all of the details associated with implementation of the statutory change. The agency has decided not to amend the rule at this time and will initiate future rule-making when all of the details of implementing the statutory change have been resolved.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**13. Incorporations by reference and their location in the rules:**

Not applicable

**14. Was this rule previously adopted as an emergency rule?**

No

**15. The full text of the rules follows:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**

**ADMINISTRATION**

**ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES**

Section

R9-22-1001. Definitions

R9-22-1002. General Provisions

R9-22-1003. Cost Avoidance

R9-22-1004. Member Participation

R9-22-1007. Notification for Perfection, Recording, and Assignment of AHCCCS Liens

R9-22-1008. Notification Information for Liens

## TITLE 9. HEALTH SERVICES

### CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

#### ADMINISTRATION

#### ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

##### **R9-22-1001. Definitions**

In addition to the definitions in A.R.S. §§ 36-2901, 36-2923 and 9 A.A.C 22, Article 1, the following definitions apply to this Article:

"Cost avoid" means to deny a claim and return the claim to the provider for a determination of the amount of first- or third-party liability.

"First-party liability" means the obligation of any insurance plan or other coverage obtained directly or indirectly by a member that provides benefits directly to the member to pay all or part of the expenses for medical services incurred by AHCCCS or a member.

"Third-party" means a person, entity, or program that is, or may be, liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or member.

~~"Third party liability" means the obligation of a person, entity, or program by agreement, circumstance, or otherwise, to pay all or part of the medical expenses incurred by an applicant or member.~~

"Third-party liability" means any individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished to a member under a State plan.

##### **R9-22-1002. General Provisions**

AHCCCS is the payor of last resort unless specifically prohibited by applicable state or federal law. Entities that pay before AHCCCS include but are not limited to:

1. Indian Health Services (IHS/638).
2. Title IV-E.
3. Arizona Early Intervention Program (AZEIP), and
4. Contract health.

##### **R9-22-1003. Cost Avoidance**

- A.** ~~AHCCCS shall cost avoid a claim if AHCCCS establishes the probable existence of first or third party liability or has information that establishes that first or third party liability exists.~~
- B.** ~~When the amount of first or third party liability is determined, AHCCCS or a contractor, when reimbursing a non-contracting provider, shall pay no more than the difference between the Capped Fee For Service Schedule amount and the amount of the first or third party liability.~~
- A.** The Administration's reimbursement responsibility.
1. The Administration shall pay no more than the difference between the Capped Fee-For-Service schedule and the amount of the third-party liability, unless Medicare is the third-party.
  2. If Medicare is the third-party that is liable, the Administration shall pay the Medicare copayment and deductible regardless of the Capped Fee-For-Service schedule.
- B.** The Contractor's reimbursement responsibility.
1. If the contract between the contractor and the provider does not state otherwise, a contractor shall pay no more than the difference between the contracted rate and the amount of the third-party liability.
  2. If the provider does not have a contract with the contractor, a contractor shall pay no more than the difference between the Capped Fee-For-Service rate and the amount of the third-party liability.
- C.** The requirement to cost avoid applies to all AHCCCS-covered services under Article 2 of this Chapter, unless otherwise specified in this Section. The following parties shall take reasonable measures to identify potentially legally liable first- or third-party sources:
1. AHCCCS, the Administration, or a contractor,
  2. A provider,
  3. A noncontracting provider, and
  4. A member.
- D.** When the Administration or a contractor determines that a third party may be liable for services provided, the Administration or contractor shall pay the full amount of the claim according to the Capped-Fee-For-Service Schedule and then seek reimbursement, when:
1. The claim is for labor and delivery and postpartum care, or
  2. The liability is from an absent parent, and the claim is for prenatal care or EPSDT services.

#### **R9-22-1004. Member Participation**

A member shall cooperate in identifying potentially legally liable first- or third-parties and timely assist ~~AHCCCS~~ the Administration and a contractor, provider, or noncontracting provider in pursuing any first- or third-party who may be liable to pay for covered services.

**R9-22-1007. Notification for Perfection, Recording, and Assignment of AHCCCS Liens**

~~A. County requirements. The member's county of residence shall notify AHCCCS under R9-22-1008 within 30 days after providing hospital or medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third party to enable AHCCCS to preserve lien rights under A.R.S. §§ 36-2915 and 36-2916.~~

~~B.A.~~ Hospital requirements. A hospital providing medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third-party shall within 30 days after a member's discharge:

1. Notify AHCCCS via facsimile or mail under R9-22-1008, or
2. Mail AHCCCS a copy of the lien the hospital proposes to record or has recorded under A.R.S. § 33-932.

~~C.B.~~ Provider and noncontracting provider requirements. A provider or noncontracting provider, other than a hospital, rendering medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third-party shall notify AHCCCS via facsimile or mail under R9-22-1008 within 30 days after providing the service.

**R9-22-1008. Notification Information for Liens**

A. Except as provided in subsection (B), a ~~county~~, hospital, provider, and noncontracting provider identified in R9-22-1007 shall provide the following information to AHCCCS in writing:

1. Name of the hospital, provider or noncontracting provider;
2. Address of the hospital, provider or noncontracting provider;
3. Name of member;
4. Member's Social Security Number or AHCCCS identification number;
5. Address of member;
6. Date of member's admission or date service is provided;
7. Amount estimated to be due for care of member;
8. Date of discharge, if member has been discharged;

9. Name of county in which injuries were sustained; and
  10. Name and address of all persons, firms, and corporations and their insurance carriers ~~claimed~~ identified by the member or legal representative ~~to be~~ as being liable for damages.
- B.** If the date of discharge is not known at the time the information in subsection (A) is provided, a party identified in subsection (A) shall notify AHCCCS of the date of discharge within 30 days after the member has been discharged.